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October 8, 2009

FILED ELECTRONICALLY

Mr. Michael E. Newmark
Administrative Law Judge
Public Service Commission of Wisconsin
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Re: Application of Milwaukee Water Works, Milwaukee
County, Wisconsin, for Authority to Increase Water Rates
PSC Docket No. 3720-WR-107

Dear Judge Newmark:

Enclosed please find Milwaukee Water Works' Response to Request to Intervene
by Clean Wisconsin in the above-referenced matter.

Very truly yours,

LINDA ULISS BURKE
Deputy City Attorney

THOMAS D. MILLER
Assistant City Attorney

LUB:bl

Enc.

c: Ms. Kira E. Loehr
Mr. Jeffrey L. Vercauteren

1048-2009-2742/150771

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**Application of Milwaukee Water Works, Milwaukee
County, Wisconsin, for Authority to Increase
Water Rates**

Docket No. 3720-WR-107

**MILWAUKEE WATER WORKS RESPONSE TO
REQUEST TO INTERVENE BY CLEAN WISCONSIN**

This response is filed in opposition to the request made by Clean Wisconsin, pursuant to Wis. Admin. Code § PSC 2.21.

BACKGROUND

Clean Wisconsin requests intervention as of right claiming it has a “substantial interest” that may be affected by this proceeding. As justification for this assertion, Clean Wisconsin claims that its members living in and around Milwaukee are affected by withdrawals of water from Lake Michigan, the use of chemicals for water treatment, and the emissions of greenhouse gases through energy consumption to distribute water. They assert that they have a “right” to intervene in this rate case to “protect the environment.” This assertion should be rejected.

In the alternative, Clean Water asks for permissive intervention under PSC 2.21(2). Permissive intervention is allowed if participation “likely” will promote the proper disposition of the issues to be determined in this specific proceeding. In addition, participation cannot impede the timely completion of the proceeding. Both of these criteria must be met. It is not likely that Clean Water’s participation will have any impact on the issues to be determined in this rate case; therefore this request must be denied.

DISCUSSION

Clean Water's purported interest in this rate case, as stated in its request, is solely to "work with the utility and Commission staff to develop the most appropriate conservation programs for Milwaukee Water Works." Clean Water wants to "recommend and explore new conservation programs and improvements to existing conservation efforts."

Unlike its application to intervene in the Waukesha Water Utility proceeding earlier this year, Clean Water does not assert an interest in conservation rates or diversion of Lake Michigan water.

The Milwaukee Water Works may discuss and voluntarily agree with Clean Water on conservation methods. But it is not "likely" that Clean Water's intervention will promote disposition of matters addressed by this rate case. Unnecessarily permitting intervention in this matter could lead to a request for compensation for its attorneys' fees and other costs, which would result in a similarly unnecessary expenditure.

A. To allow Clean Water to intervene as a "right," the PSC **MUST** find that Clean Water has demonstrated a "substantial interest" that might be affected by the PSC's decision in this proceeding.

This means a legally protected interest. *Wisconsin's Environmental Decade v. DNR*, 69 Wis. 2d 1, 230 N.W.2d 243 (1974).

All Clean Water asserts to meet its burden of proof on this issue are generic statements of concern for the air and the water, which could render every man, woman, and child an intervener by right in this rate case. Even assuming that this constitutes a substantial interest under the Administrative Code, these interests will not be directly or immediately affected by the PSC's ruling in this rate case. *City of Madison v. WERC*, 234 Wis. 2d 550, 610 N.W. 2d 94 (2000).

B. To allow Clean Water to intervene by permission, the PSC **MUST** find that Clean Water's participation is "likely" to promote the disposition of issues in this proceeding. It is not.

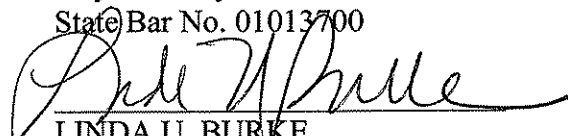
This is a rate case. Conservation programs are properly addressed by the DNR and the PSC on a statewide basis. Again, Clean Water makes no mention of conservation water rates as the basis for its request for intervention. Mandatory water conservation programs are traditionally not part of a rate case.

In addition, in order to permit intervention, the PSC also **MUST** make a finding that Clean Water's participation will not impede the timely completion of this proceeding. To insert Clean Water's perspective and issues into this proceeding would inescapably, lengthen and complicate the proceeding, costing the Milwaukee Water Works revenues that it could be collecting through a more expeditious imposition of new rates.

For all these reasons, the Milwaukee Water Works asks that Clean Water's request be denied. The PSC must find that certain criteria were met before allowing intervention, and those factors do not exist in the context of this request and this proceeding.

Dated at Milwaukee, Wisconsin this 8 day of October, 2009.

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150757/1048-2009-2742